



80-SBE-033

BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
CHRISTINA GEE DAVIS)

For Appellant: Christina Gee Davis,
in pro. per.

For Respondent: John A. **Stilwell**, Jr.
Counsel

O P I N I O N

This appeal is made pursuant to section 18593 of the Revenue and Taxation Code from the action of the Franchise Tax Board on the protest of Christina Gee Davis against a proposed assessment of additional personal income tax and penalties in the total amount of \$294.57 for the year 1977.

Appeal of Christina Gee Davis

Appellant and her husband, Dennis R. Davis, filed an unsigned 1977 California personal income tax Form 540 devoid of information relating to their filing status, income, deductions and credits. Attached to the form was a statement refusing to provide any information on the grounds of possible self-incrimination. Although respondent advised them that they had not filed a valid return and demanded that they do so, appellant and her husband have never filed a proper 1977 return. Consequently, based on information initially obtained from the California Employment Development Department and confirmed by appellant's 1977 W-2 form, respondent determined appellant's income and assessed the deficiency now in question. Included in the assessment **were** penalties for failure to file a return, for failure to file after notice and demand, and for negligence. No assessment was made against appellant's husband because he apparently was outside California in military service during 1977.

It is well established that respondent's determinations of additional tax, including failure to file and negligence penalties, are presumptively correct, and that **the** taxpayer bears the burden of proving them erroneous. (See, e.g., Appeal of K. L. Durham, Cal. St. Bd. of Equal., March 4, ~~1980~~.) No such showing has been made. On the contrary, the evidence in the record establishes **clearly that respondent's calculation of appellant's** income is correct, and that the penalties are fully justified. (See Appeal of Arthur W. Keech, Cal. St. Bd. of Equal., July 26, 1977.)

The only **remaining** question is whether respondent correctly computed appellant's tax liability on the basis of a married person filing a separate return. Appellant contends that this was wrong because she filed a joint return with her husband. The flaw in her position is that the Form 540 she and her husband filed was not a "return" at all, since it was unsigned and did not contain the required financial data. (Appeal of Arthur W. Keech, supra; Cal. Admin. Code, tit. 18, reg. 18433.2.) Thus, although appellant certainly could have elected to file a joint return with her husband (Rev. & Tax. Code, § 18402; Cal. Admin. Code, tit. 18, reg. 18401-18404(a)), the election was not exercised and respondent was entitled to treat appellant as a married person filing a separate return. Furthermore, respondent correctly computed the deficiency on the basis of appellant's entire earnings, rather than on only her one-half community property interest in them, since Revenue and Taxation Code section 18555, subdivision (a), provides:

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The spouse who controls the disposition of or who receives or spends community income as well as the spouse who is taxable on such income is liable for the payment of the taxes imposed by this part on such income.


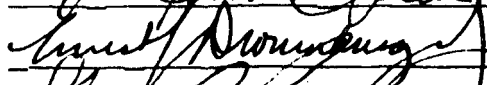
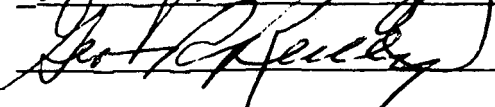
For the reasons expressed above, respondent's action in this matter will be sustained.

O R D E R

Pursuant to the views expressed in the opinion of the board on file in this proceeding, and good cause appearing therefor,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED, pursuant to section 18595 of the Revenue and Taxation Code, that the action of the Franchise Tax Board on the protest of Christina Gee Davis against a proposed assessment of additional personal income tax and penalties in the total amount of \$294.57 for the year 1977, be and the same is hereby sustained.

Done at Sacramento, California, this 8th day of April , 1980, by the State Board of Equalization.


_____, Chairman

_____, Member

_____, Member
_____, Member
_____, Member